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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/025,059	12/19/2001	Patricia Lee Christon	8819	6014

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THE PROCTER & GAMBLE COMPANY
INTELLECTUAL PROPERTY DIVISION - WEST BLDG.
WINTON HILL BUSINESS CENTER - BOX 412
6250 CENTER HILL AVENUE
CINCINNATI, OH 45224

EXAMINER	
KIDWELL, MICHELE M	
ART UNIT	**PAPER NUMBER**
3761	

MAIL DATE	DELIVERY MODE
05/25/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/025,059	CHRISTON ET AL.	
	Examiner	Art Unit	
	Michele Kidwell	3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *05 March 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-17 and 19* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-17 and 19* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 9 – 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Uitenbroek et al. (US 5,897,541).

As to claims 1 and 9, Uitenbroek et al. (hereinafter "Uitenbroek") disclose an absorbent article having an upper surface, a lower surface and a periphery comprising a topsheet having a bottom surface and a viewing surface positioned opposite to the bottom surface, the viewing surface facing upwardly towards the upper surface of the absorbent article, a backsheet having a garment facing surface and a user facing surface positioned oppositely to the garment facing surface, the backsheet being joined to the topsheet (col. 1, lines 45 – 58); an absorbent core having a top surface and a bottom surface positioned opposite to the top surface, the absorbent core being positioned between the topsheet and the backsheet (col. 1, lines 60 – 62); and the absorbent article having a colored portion and a non-colored portion (col. 1, lines 63 – 65), the colored portion and the non-colored portion being viewable from the viewing surface of the topsheet (col. 1, lines 36 – 38), the colored portion having a first shade and a second shade, the first shade being positioned substantially centrally within the second shade, the second shade being different from the first shade, the shades

operating to create a perception of depth within the absorbent article by a user looking upon the viewing surface of the topsheet as set forth in col. 1, lines 35 – 44 and in figure 1.

With reference to claim 10, Uitenbroek discloses an absorbent article wherein the colored portion is an insert positioned between the topsheet and the absorbent core as set forth in col. 1, lines 48 – 58.

Regarding claim 11, Uitenbroek discloses the colored portion forming part of the topsheet as set forth in col. 1, lines 62 – 65.

Regarding claim 12, Uitenbroek discloses the colored portion forming part of the absorbent core whereby the colored portion is viewable from the viewing surface of the topsheet as set forth topsheet as set forth in col. 1, lines 62 – 65.
Uitenbroek states that the topsheet is transparent which would allow for the viewing of the colored layer and the examiner contends that the colored layer may be considered a part of the absorbent core since the liquid permeable layer would also function in retaining some liquid.

As to claim 13, Uitenbroek discloses the colored portion as a multi-layered insert that is positioned beneath the topsheet as set forth in col. 1, line 59 to col. 2, line 5 and in col. 2, lines 51 – 52.

With respect to claim 14, Uitenbroek discloses an absorbent article wherein the colored portion comprises a multi-colored insert positioned beneath the topsheet and comprising at least a first layer and a second layer wherein the first layer comprises one

shade of color and wherein the second layer comprises another shade of color as set forth in col. 1, line 35 to col. 2, line 5 and in col. 2, lines 51 – 52.

With reference to claims 15 – 17, Uitenbroek discloses the topsheet as a formed film and a nonwoven as set forth in col. 3, lines 41 – 55 and col. 5, lines 1 – 4.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 2 – 8 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Uitenbroek et al. (US 5,897,541).

The difference between Uitenbroek and claim 2 is the provision that the first shade of the color is darker than second shade of the color.

It would have been obvious to one of ordinary skill in the art to modify the shades of color of Uitenbroek to provide a first shade that is darker than a second shade because Uitenbroek discloses that the coloration of the invention is different from each other as set forth in col. 1, lines 53 – 58.

The difference between Uitenbroek and claims 3 – 7 is the provision that colors are measured by a specific test and provide color differences when measured at different point.

The examiner contends that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

The difference between Uitenbroek and claims 8 and 19 is the provision that the colored portion has a specific range of the viewing surface of the topsheet.

It would have been obvious to one of ordinary skill in the art to modify the range of the colored portion since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering to optimum or workable range involves only a level of ordinary skill in the art.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1 – 17 and 19 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 – 8

and 10 – 17 of copending Application No. 10/945,403. Although the conflicting claims are not identical, they are not patentably distinct from each other because both the instant application and copending Application No. 10/945,403 are directed toward an absorbent article comprising a colored portion and a non colored option with shades that operate to create a perception of depth within the absorbent article.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1 – 17 and 19 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1,17 and 20 of copending Application No. 10/967,454. Although the conflicting claims are not identical, they are not patentably distinct from each other because both the instant application and copending Application No. 10/967,454 are directed toward an absorbent article comprising a colored portion having a first shade and a second shade wherein the shades operate to create a perception of depth.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1 – 17 and 19 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 17 and 20 of copending Application No. 10/967,818. Although the conflicting claims are not identical, they are not patentably distinct from each other because both the instant application and copending Application No. 10/967,818 are directed toward an absorbent

article comprising a colored portion and a non-colored portion wherein the colored portion further comprises a first and second shade.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1 – 17 and 19 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 – 11 of copending Application No. 11/525,554. Although the conflicting claims are not identical, they are not patentably distinct from each other because both the instant application and copending Application No. 11/525,554 are directed toward an absorbent article comprising a colored portion and a non-colored option wherein the colored portion further comprises a first and second shade.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Response to Arguments

Applicant's arguments filed March 5, 2007 have been fully considered but they are not persuasive.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., a color having a specific L, a and b value) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the

specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

With respect to claim 2, Uitenbroek discloses that one coloration is different from the other. For one coloration to be distinguishable from the other, one would have to be either darker or lighter than the other. Even if different colors were used, one would be a different shade (i.e., darker or lighter) than the other.

As to claim 3 – 7, Uitenbroek discloses different colorations which would ultimately produce L, a and b values if tested as claimed. The differences between the values would come as a result of which, if any, colors were tested alone and/or in combination.

Regarding claims 8 and 19, the examiner maintains the current rejection in light of the fact that any portion(s) of the colored portion may be considered in order to meet the claimed limitation based on the desired end product.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 571-272-4935. The examiner can normally be reached on Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Michele Kidwell
Primary Examiner
Art Unit 3761